

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

ANTONIO LOPEZ SERNA,

Plaintiff,

v.

CV 12-0853 MV/WPL

ANTHONY ROMERO, et al.,

Defendants.

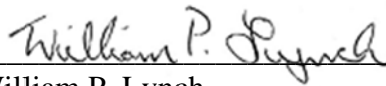
ORDER DENYING APPOINTMENT OF COUNSEL

This matter is before me on Antonio Lopez Serna's motion for appointment of counsel. (Doc. 14.) There is no Sixth Amendment right to appointed counsel in a civil proceeding. *See Macquish v. United States*, 844 F.2d 733, 735 (10th Cir. 1988). When a plaintiff is proceeding pursuant to 28 U.S.C. § 1915, "[t]he burden is on the applicant to convince the court that there is sufficient merit to his claim to warrant the appointment of counsel." *Hill v. SmithKline Beecham Corp.*, 393 F.3d 1111, 1115 (10th Cir. 2004) (quoting *McCarthy v. Weinberg*, 753 F.2d 836, 838 (10th Cir. 1985)). In deciding whether to appoint counsel, a court should consider the following factors: the merits of the claims, the nature and complexity of the factual and legal issues raised in the claims, and the litigant's ability to investigate the facts and present the claims. *Id.* A decision to deny counsel will only be overturned when it results in fundamental unfairness. *Steffey v. Orman*, 461 F.3d 1218, 1224 (10th Cir. 2006).

Based on an initial review of the record, Serna appears to understand the issues in the case and to be representing himself in an intelligent and capable manner. However, I may refer the matter for consideration under the Court's Pro Bono Plan. Under this plan, a selection

committee will review the case and vote as to whether the case qualifies for pro bono representation. I have decided to refer this case to the committee. **My recommendation of this matter to the selection committee is in no way a guarantee of representation nor should it be construed as indicative of the Court's opinion regarding the merits of Serna's claims.** The Court will contact Serna with the outcome of the committee's decision.

IT IS THEREFORE ORDERED that the motion is denied.

A handwritten signature in cursive script, reading "William P. Lynch", is written over a horizontal line.

William P. Lynch
United States Magistrate Judge

A true copy of this order was served on the date of entry--via mail or electronic means--to counsel of record and any *pro se* party as they are shown on the Court's docket.